

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 22, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUCIO ANGEL ESTRADA,

Defendant.

No. 1:19-cr-02045-SMJ-1

**ORDER DENYING  
DEFENDANT'S MOTION TO  
SEVER COUNTS**

Before the Court is Defendant's Motion to Sever Counts 1 to 3 from 4 and 5, ECF No. 135. The Court has determined that this motion is appropriate for resolution without oral argument. By separate Order, the Court granted Defendant's motion to suppress evidence related to Counts 1–3. ECF No. 204. In the event the Government elects to proceed with Counts 1–3, the Court finds that all Counts must be tried together and therefore denies Defendant's instant motion.

**BACKGROUND**

The Court has previously set forth the facts of this case in detail and will not do so again here. Briefly though, Defendant is charged with five counts of drug and firearm offenses stemming from three separate arrests and searches during the late summer and fall of 2019. First, Defendant was arrested on August 17, 2019 after law

1 enforcement discovered him passed behind the wheel of a vehicle at a stoplight. Law  
2 enforcement searched the vehicle two days later and found illicit narcotics and a  
3 firearm that Defendant is prohibited from possessing due to his status as a felon.<sup>1</sup> In  
4 connection with these events, Defendant was charged with possession with intent to  
5 distribute fifty grams of more of actual methamphetamine (Count 1), possessing a  
6 firearm in furtherance of a drug trafficking crime (Count 2), and felon in possession  
7 of a firearm (Count 3). ECF No. 32.

8 Then, on September 7, 2019, law enforcement again encountered Defendant  
9 passed out behind the wheel of a running vehicle. Law enforcement eventually  
10 executed a search warrant on the vehicle and discovered more illicit narcotics.  
11 Defendant was thereafter charged with possession with intent to distribute 50 grams  
12 or more of actual methamphetamine (Count 4). ECF No. 32.

13 Less than one week later, Defendant arrived at a tow yard to retrieve the  
14 impounded vehicle he was driving on September 7, 2019. After a K9 alerted on the  
15 vehicle Defendant arrived in, law enforcement discovered two loaded firearms, both  
16 with live rounds. For this, Defendant was charged with being felon in possession of  
17 a firearm (Count 5). ECF No. 32.

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<sup>1</sup> The Court has suppressed the narcotics and firearm and all other evidence found during law enforcement's search of Defendant's vehicle on August 19, 2019. ECF No. 204.

1 Defendant now moves to sever Counts 1–3 from Counts 4–5, arguing that  
2 there is no common scheme or plan supporting mandatory joinder and alternatively,  
3 that joinder of the counts would be prejudicial. ECF No. 135

#### 4 DISCUSSION

5 Under Federal Rule of Criminal Procedure 8, joinder of offenses is proper  
6 where the offenses “are of the same or similar character, or are based on the same  
7 act or transaction, or are connected with or constitute parts of a common scheme or  
8 plan.” Fed. R. Crim. P. 8(a). “[T]he validity of the joinder is determined solely by  
9 the allegations in the indictment.” *United States v. Jawara*, 474 F.3d 565, 572 (9th  
10 Cir. 2007) (internal quotation marks omitted). Because the dominant concern is  
11 judicial economy, “joinder is the rule rather than the exception.” *United States v.*  
12 *Armstrong*, 621 F.2d 951, 954 (9th Cir. 1980).

13 Nonetheless, under Federal Rule of Criminal Procedure 14, “[o]ffenses  
14 properly joined under Rule 8 may be severed in the trial court's discretion . . . if  
15 joinder is prejudicial.” *United States v. Johnson*, 820 F.2d 1065, 1070 (9th Cir.  
16 1987). Severance is only warranted where the defendant can “demonstrate clear,  
17 manifest, or undue prejudice resulting from joinder.” *United States v. Adler*, 879  
18 F.2d 491, 497 (9th Cir. 1988). Joinder of offenses may prejudice the defendant  
19 where the jury may use the evidence of separate counts to infer a criminal  
20 disposition on the part of the defendant. *Johnson*, 820 F.2d at 1069. However, “[i]f

1 all of the evidence of the separate count would be admissible upon severance,  
2 prejudice is not heightened by joinder.” *Id.*

3 The Court finds that joinder of all offenses is proper because the offenses are  
4 of the same or similar character. The Ninth Circuit has explained that “the same or  
5 similar character language in Rule 8(a) [is] a rather clear directive to compare the  
6 offenses charged for *categorical*, not evidentiary, similarities. *Jawara*, 474 F.3d at  
7 577 (internal quotation marks omitted) (emphasis added). In ascertaining whether  
8 offenses are of the same or similar character, relevant factors include: “the elements  
9 of the statutory offenses, the temporal proximity of the acts, the likelihood and  
10 extent of evidentiary overlap, the physical location of the acts, the modus operandi  
11 of the crimes, and the identity of the victims.” *Id.* at 578. A court need not weigh  
12 each factor the same; the specific context of the case may direct the weight given a  
13 particular factor. *Id.*

14 First, three of the five counts are drug trafficking offenses (Counts 1, 2, and  
15 4). The other two counts (Counts 3 and 5) are the same charge—being a felon in  
16 possession. Counts 1–3 are temporally separated from Count 4 by approximately  
17 21 days and from Count 5 by slightly more than 21 days, but less than 30 days.  
18 Additionally, there is more than incidental evidentiary overlap. Defendant’s status  
19 as a felon is necessary to prove Counts 3 and 5, and evidence of drug test reports  
20 and experts to prove the drug offenses are relevant to Counts 1 and 4. Finally, the

1 indictment shows a similar mode of operation with respect to the five offenses: drug  
2 trafficking and trafficking paraphernalia, and more specifically Defendant being  
3 passed out behind the wheel of a running vehicle containing contraband. As such,  
4 joinder is proper here.

5 Defendant alternatively argues that even if joinder is proper under Federal  
6 Rule of Criminal Procedure 8, he will suffer prejudice if the counts are not severed.  
7 In support, he states that “the quantity of drugs involved on each count with the  
8 multiple firearms would naturally prejudice Mr. Estrada if the case was tried  
9 together.” ECF No. 135. But even if the Court were to sever the counts as requested,  
10 each trial would involve charges for both guns and drugs. Defendant’s argument is  
11 essentially that the totality of the evidence would weigh so heavily against him that  
12 he would suffer prejudice if the Court didn’t sever the counts. This is not the  
13 standard, and regardless, the identified prejudice falls short of Defendant’s burden  
14 to demonstrate a clear, manifest, or undue prejudice resulting from joinder.  
15 Defendant’s motion is denied and all counts will remain joined.

16 Accordingly, **IT IS HEREBY ORDERED:**

17 **1.** Defendant’s Motion to Sever Counts 1 to 3 from 4 and 5, **ECF No.**  
18 **135**, is **DENIED**.

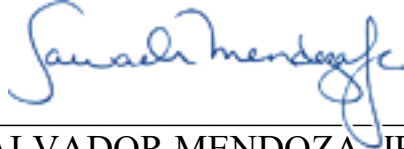
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2 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this order and  
3 to provide copies to all counsel.

4 **DATED** this 22<sup>nd</sup> day of July 2022.

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6 SALVADOR MENDOZA, JR.  
United States District Judge